

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF NEW YORK**

JANE DOE and SALLY ROE (pseudonyms))

Plaintiffs,)

v.)

COUNTY OF WESTCHESTER;)

GEORGE LATIMER, Chief Executive of the)
County of Westchester, in his official capacity;)

**COUNTY OF WESTCHESTER COUNTY
DEPARTMENT OF PUBLIC SAFETY;**)

TERRANCE RAYNOR, acting Commissioner of)
the Westchester Department of Public Safety, in his)
official capacity;)

NEW ROCHELLE POLICE DEPARTMENT;)

**CITY OF WHITE PLAINS DEPARTMENT OF
PUBLIC SAFETY,**)

)

Defendants

Case No. 7:22-cv-6950-PMH

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION
FOR LEAVE TO PROCEED UNDER PSEUDONYMS**

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BACKGROUND

This suit arises in the context of the leaking of the draft opinion in *Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2234 (2022), overruling *Roe v. Wade*, on May 2, 2022, and the handing down of that opinion by the Court in final form on June 24, 2022. These events have triggered an unprecedented and orchestrated wave of violence against churches, pregnancy centers, and people of pro-life persuasion all across the country, including against the home of the president of the legal organization representing these Plaintiffs. Moreover, under a confidentiality agreement, Plaintiffs intend to provide their identities to Defendants' counsel, Defendants, and the Court. Further, as there is no jury in this case, Defendants will not have to defend themselves to a jury of their peers while Plaintiffs remain under a cloak of anonymity. Thus Plaintiffs' motion does not prejudice any party.

The leaking and final publication of the opinion in *Dobbs* was accompanied by the “doxing” of Justices Alito, Barrett, Gorsuch and Kavanaugh and the unprecedented massing of demonstrators in front of the Justices' homes to curse, revile and intimidate them in violation of 18 U.S.C. § 1507, which prohibits, as an extortionate practice, picketing or parading in front of a judge's home “with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge.”

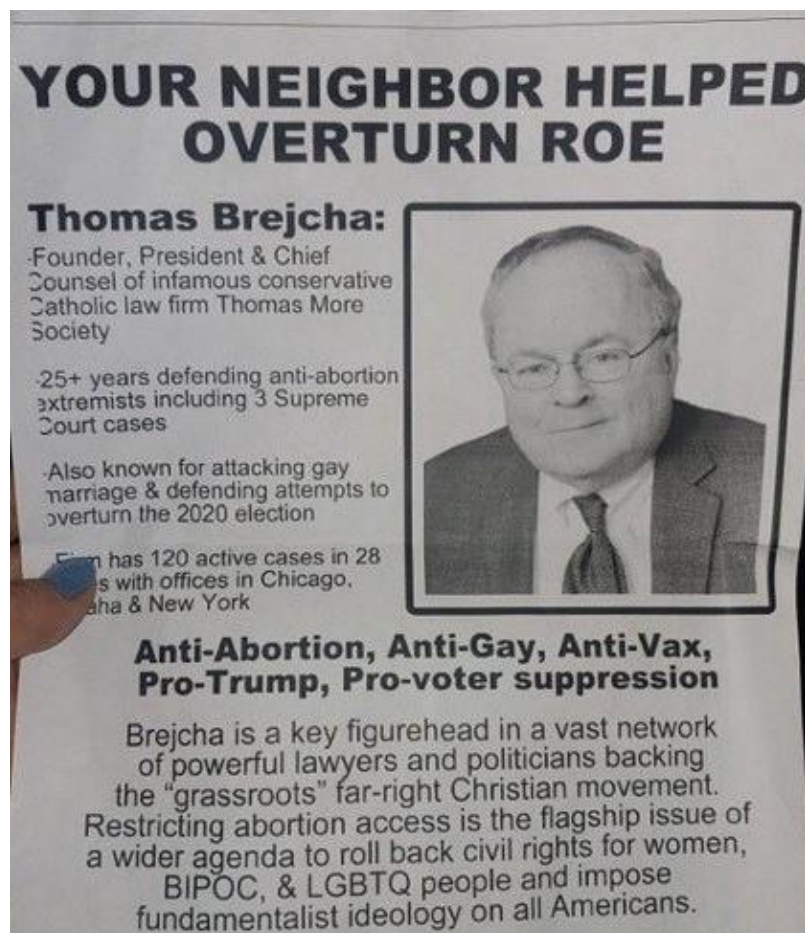
This still-ongoing illegal and extortionate tactic escalated with the attempted assassination of Supreme Court Justice Brett Kavanaugh at his home on June 8, 2022, for which the perpetrator has been indicted for attempted murder. **EXHIBIT A**

Two days later, on June 10, 2022, a group calling itself “Ruth Sent Us” tweeted an infographic targeting Justice Barrett's children for confrontation, identifying the school they attend and declaring that a demonstration would be organized there every Thursday evening.

EXHIBIT B

On July 1, 2022, 40-50 masked demonstrators belonging to a group that calls itself “Reproductive Justice Union” attacked the home of attorney Thomas Brejcha, President of Thomas More Society (TMS), the pro-life national public interest law firm whose undersigned special counsel represents the Plaintiffs herein, who retained the undersigned counsel days before the attack.

The attack on attorney Brejcha’s home followed circulation of a “doxing” poster, depicted below, identifying him as the target: **EXHIBIT C**



The masked demonstrators dropped loud smoke bombs, surged onto the lawn of Attorney Brejcha's home, and hurled paint bombs at the brick front of the house, porch, and door, staining



the property with green paint, uprooted a rose bush, and inked the sidewalk and driveway with “F” words, anarchist symbols (circled capital “A”), and slogans, including “No Gods, No Rulers,” and “Abort the Supreme Court.” While the demonstrators were finally ordered by police to disperse after they trespassed and vandalized the Brejcha family’s private property, no arrests were made.

Prior to the attack on attorney Brejcha’s home, the “Reproductive Justice Union” posted the following Tweet on how to evade law enforcement and criminal prosecution: **EXHIBIT D**

The illegal demonstrations in front of the homes of Supreme Court Justices, the attempted

assassination of Justice Kavanaugh, the threats against Justice Barrett’s children, and the attack on the home of attorney Brejcha, whose national public interest law firm is providing pro bono representation to the Plaintiffs in this pro-life, First Amendment litigation, are only a small part of a post-*Dobbs* nationally orchestrated wave of violence, threats of violence and intimidation by radical pro-abortion groups against churches, pro-life pregnancy centers, groups and individuals under the banner ***“If abortions aren’t safe, then neither are you.”*** **EXHIBIT E**

That threat is the very motto of a purported pro-abortion group that calls itself “Jane’s Revenge,” which vows a nationwide campaign of violence in retaliation for the *Dobbs* decision.

After the fire-bombing of a pro-life crisis pregnancy center in Wisconsin, “Jane’s Revenge” issued its “First Communiqué,” stating as follows: “Again, this was only a warning. Next time the infrastructure of the enslavers will not survive. Medical imperialism will not face a passive enemy. Wisconsin is the first flashpoint, but we are all over the US, and we will issue no further warnings.... We are not one group, but many. We are in your city. We are in every city....”

EXHIBIT F

In keeping with this threat, pro-life pregnancy centers across the nation have been subjected to arson and other attacks. **EXHIBIT G** As “Jane’s Revenge” declared on June 15, 2022:

You have seen that we are real, and that we are not merely pushing empty words. As we said: we are not one group but many. You have seen us in Madison WI, Ft. Collins CO, Reisertown MA, Olympia WA, Des Moines IA, Lynwood WA, Washington DC, Ashville NC, Buffalo NY, Hollywood FL, Vancouver WA, Frederick MA, Denton TX, Gresham OR, Eugene OR, Portland OR, among others, and we work in countless locations invisibly. **You’ve read the communiqués from the various cells, you’ve seen the proliferating messages in graffiti and elsewhere, and you know that we are serious.** **EXHIBIT H**

“Jane’s Revenge” also issued a manifesto declaring that *“demure little rallies for freedom” would not suffice* as a response to the *Dobbs* ruling, calling instead for *“rage”* and

“anger”, and insisting that “the state [must] feel our full wrath”....*“We cannot sit idly by anymore while our anger is yet again channeled into Democratic party fundraisers and peace parades with the police.”* **EXHIBIT I**

The manifesto issued by “Jane’s Revenge” called upon the organization’s adherents to take up “direct and militant action”... “carrying that anger out into the world and expressing it physically”... “mak[ing] your anger known” and “reach[ing] out to communities who may not be in touch with ‘radical circles’ online . . . *We need to express this madness fully and with ferocity. We need to quit containing ourselves...Consider this your call to action”* *Id.*

And in a separately released letter addressed to pro-life pregnancy support centers, Fox News reported that “Jane’s Revenge” made still more alarming threats of violence:

The letter described how “easy and fun it is to attack” and vowed to take “increasingly drastic measures against oppressive infrastructures” following the expiration of the supposed deadline, saying this time “those measures may not come in the form of something so easily cleaned up as fire and graffiti.”... The group appeals to anyone “with the urge to paint, to burn, to cut, to jam” to commit violence. ... “Through attacking, we find joy, courage, and strip the veneer of impenetrability held by these violent institutions.” **EXHIBIT J**

For any pro-life organization that remained open and continued to provide pro-life services to expectant mothers, it said, “it’s open season, and we know where your operations are.” *Id.*

And in a July 8 communiqué, “Jane’s Revenge” invited a veritable campaign of unrelenting violence: **EXHIBIT K**

As others have said, it is fun and easy to attack. As more people discover the joy in attacking the infrastructure of the patriarchy, the attacks will surely continue with increasing frequency. To anyone reading this thinking that it sounds like a good time, consider this your invitation to join the party. To any purveyors of patriarchy that might be reading this, f**k off, or you could be next.

In New York State a pro-life pregnancy center in Buffalo, administered by the CompassCare organization, which offers a wide range of support services to women who choose

not to abort their children, was firebombed and the motto “Jane was here” spray-painted on the building. **EXHIBIT L**

A hostile press disparaged CompassCare as “unethical” and as merely “claim[ing] to offer legitimate medical services to women considering abortion.” Regarding CompassCare’s pro bono services in support of the choice to continue a pregnancy, the hostile press, with contemptuous quotation marks, reported that “Those ‘services’ include reversal of an abortion for women who have taken an abortion pill, and providing information about the health risks of terminating a pregnancy.” *Id.*

The press account failed to note that the abortion reversal procedure is for women who personally request it upon believing that they have made a terrible mistake. **EXHIBIT M**

After CompassCare Pregnancy Services was firebombed, Live Action reported that police were alerted when “[s]ources monitoring the social media pages of abortion activists flagged multiple comments encouraging followers to locate the home of CompassCare CEO Jim Harden. *Harden’s wife and young children relocated yesterday, as police track suspicious activity at their home*” (6/7/2022)(emphasis added). **EXHIBIT N**

On the evening of June 24, following the publication of the *Dobbs* decision, an estimated 17,000 protestors gathered in Washington Square in New York City. At one point in the evening, New York Attorney General Letitia James used a bullhorn to address the crowd, denouncing the Supreme Court as “radical,” and further telling the protestors: “Every movement in this country, every revolution we’ve ever experienced in this country, has not been led by elected officials, it’s been led by all of you who are here today to demand justice,” as organizers continued to call upon those present to “*bring your rage.*” **EXHIBIT O**

As if in anticipation of criminal acts of violence, “The NYC for Abortion Rights” Twitter

account reposted advice from an organizer for the rallies that said participants should turn off their phones’ facial recognition and location services — and write the name of their lawyers on their arms....Wear a mask and cover any identifying markings (tattoos, birthmarks, etc.), the post said.” *Id.*

On June 24, the New York Post also reported the following:

The NYPD had already announced “enhanced patrols,” including at “abortion alternative clinics,” to thwart attacks from “extremists and malicious actors,” according to a memo sent by the department’s intelligence bureau Wednesday in anticipation of the ruling.

“Numerous acts of property destruction across the US necessitates heightened situational awareness for members of the service on protective deployments at related entities in New York City,” the memo states. *Id.*

The following day, June 25, the New York Post also reported:

During the march, the crowd made a stop at the News Corp building on 6th Avenue, which is home to Fox News and The New York Post ...

“Burn it down! Burn it down! F—k Tucker Carlson!” the crowd yelled outside the News Corp building ...

“F— you!” they yelled at a pair of security guards ... Someone from the crowd also spraypainted “F—k Fox” on the side of the building ... **EXHIBIT P**

Catholic Churches—both Plaintiffs are Catholic—are also being targeted and vandalized by abortion activists. In May, following the *Dobbs* leak, Saint Augustine church in Brooklyn was vandalized and a gold tabernacle worth \$2 million was stolen. *Upon finding that statues inside the church were also maliciously decapitated and destroyed by the same vandals, the police are treating the incident as a crime “of disrespect and hate” for the Catholic Faith, fueled by the current climate of anger and animosity being directed toward the Catholic Church in light of the Dobbs decision.* **EXHIBIT Q**

In New York City, Father Brian Graebe, pastor of Saint Patrick’s Old Cathedral said: “We have received a number of threats to bomb the church, burn it down.” *Id.*

Also in May, on the lower East Side of Manhattan, vandals beheaded and smashed two statues belonging to an outdoor Shrine at Our Lady of Sorrows Church. **EXHIBIT R**

In yet another incident of violence in New York, St. Margaret's Roman Catholic Church on Hertel Avenue in Buffalo, New York, was vandalized on June 22. Several religious statues in the church's garden were beheaded and vandalized. **EXHIBIT S**

And on June 28, America Magazine reported the following acts of vandalism which took place at Church of the Ascension in Manhattan (**EXHIBIT T**):

Several acts of vandalism targeting Catholic churches occurred in the days following the Supreme Court's decision to overturn *Roe v. Wade*.

Employees at the Church of the Ascension in New York City's Upper West Side neighborhood discovered spray-painted graffiti on the front doors of the church early Monday morning. "If abortion isn't safe, neither are you" was scrawled in black paint, along with "Jane's Revenge," an apparent reference to what the Department of Homeland Security describes as a "network of loosely affiliated suspected violent extremists," who are reacting to the U.S. Supreme Court's ruling that abortion is not a constitutional right.

The Rev. Daniel Kearney, the church's pastor, told America that ... security cameras spotted someone vandalizing the doors around 3:30 in the morning on Monday, just a few minutes after a police presence on the block had departed.

Father Kearney said he was "saddened" by the vandalism, but ... that the parish is working with police as they increase patrols around the church ahead of weekend services. "Clearly this is going to be an ongoing debate and discussion, and it just can't be reduced to vandalism and violence," he said.

On June 13, 2022, regarding vandalization of Catholic Churches in New York City and elsewhere, Cardinal Timothy Dolan issued a press release on behalf of the United States Conference of Catholic Bishops (USCCB) stating as follows:

For two years now, Catholic churches have been attacked and vandalized at an alarming rate Since the leak of the draft opinion in *Dobbs v. Jackson Women's Health Organization*, charities that support pregnant mothers in need have been firebombed, and pro-life organizations have been attacked almost daily and terrorized, and even the lives of Supreme Court justices have been directly threatened. In light of this, we urge our elected officials to take a strong stand

against this violence, and our law enforcement authorities to increase their vigilance in protecting those who are in increased danger. **EXHIBIT U**

On August 6, 2022, Fox News reported the following headline and news account, including video footage, regarding pro-abortion protestors attacking pro-life activists at Saint Patrick's Old Cathedral in Manhattan, where the pro-life group gathered to pray for an end to abortion. The pro-life activists were ultimately constrained to take refuge in the Cathedral as the pro-abortion protestors threatened them and called them "Nazis":

"Multiple arrested after New York City pro-abortion protesters shout down Catholic parishioners outside church"

Several arrests were made as pro-abortion protestors clashed with anti-abortion activists at a New York City Catholic Church on Saturday. The New York Police Department confirmed to Fox News Digital that five arrests were made at a pro-abortion protest at The Basilica of St. Patrick's Old Cathedral in Lower Manhattan.

Several videos and photos posted on social media by individuals at the protest showed NYPD officers making arrests and attempting to subdue the crowd.

Video provided to Fox News Digital by the New York Young Republican Club Catholic Caucus shows pro-abortion protestors shouting down Catholic parishioners as they attempt to enter the church and calling them Nazis.

"The NYYRC Catholic Caucus denounces the violence once again directed at parishioners of Old St. Patrick's this morning, another effort to terrorize Catholics, and we applaud any members of our group who attended their rosary rally," the caucus told Fox News Digital in a statement. "Open witness to Christ in New York City is a dangerous act; history will look fondly on those who stood nonetheless. Growing forces in this city want to stop anyone from standing for Christ. If so, we will kneel for him." **EXHIBIT V**

In June 2022 it was noted by one news source that "23 pro-life organizations had been firebombed, damaged" in anticipation of the Supreme Court ruling in the Dobbs case. The RNC was cited in that same source as noting that not a single one of these attacks had been condemned by the current Administration. The article further observed:

“The Biden administration has not condemned any of the bombings and took days to condemn the assassination attempt of Supreme Court Justice Brett Kavanaugh. The attempt against Kavanaugh was narrowly averted and only after the attacker phoned into 911 his intent to kill the justice.” **EXHIBIT W**

In view of the continuing nationwide wave of violence and threats of violence by militant pro-abortion groups since the decision in *Dobbs*, including a violent attack on the home of the head of the public interest law firm that provides representation to Plaintiffs herein, Plaintiffs reasonably fear that because they have brought this suit, which will attract considerable publicity, they will be “doxed” and that their homes, businesses and family members will be subjected to force, threats of force, violence, trespass, vandalism, and other unlawful activity in retaliation, as was Attorney Brejcha.

As the following Argument notes, this case involves purely legal issues that do not require public revelation of Plaintiffs’ identity, and Plaintiffs intend to reveal their identities to Defendants’ counsel, Defendants, and to the Court. If those who are perpetrating violence and threats of violence are allowed to hide their identities behind masks while they terrorize their victims, Plaintiffs and their families as potential victims should be allowed the protection of pseudonymity.

ARGUMENT

I. PLAINTIFFS SATISFY THE STANDARD FOR PROCEEDING UNDER PSEUDONYMS

The Second Circuit recognizes Plaintiffs’ right to proceed pseudonymously when their interest in anonymity outweighs “the public’s interest in disclosure and any prejudice to the defendant.” *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185, 189 (2d Cir. 2008). The Second Circuit has adopted a non-exclusive multi-factor balancing test to resolve this question, see *id.*, 537 F.3d at 190, and Plaintiffs easily meet at least the following factors:

First, identification poses a substantial “risk of retaliatory physical or mental harm” to Plaintiffs given the pervasive climate of threats and violence directed against pro-life individuals and organizations, including the head of the public interest law firm providing representation to these plaintiffs. Notably, Plaintiffs do not advocate wearing name tags, so the fact that they advocate in public has no bearing on their need for pseudonymity.

Second, Plaintiffs are “particularly vulnerable” to these consequences because they are isolated individuals without a security force or any other means of self-defense, unlike Supreme Court Justices.

Third, Plaintiffs are challenging “the actions of government” and would thus be admitting to designs to engage in “prohibited conduct” when that very conduct is being demonized by violent anti-pro-life extremists.

Fourth, the Defendants are not prejudiced by allowing the adult Plaintiffs to proceed pseudonymously where, as demonstrated in the Verified Complaint and the forthcoming Motion for Preliminary Injunction, “because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigants’ identities.”

And, in any case, Plaintiffs’ real names would be revealed to defense counsel under an appropriate confidentiality agreement, so that there will be no “inherent asymmetry in conducting discovery.” Letter of counsel for County Defendants, ECF No. 16 at p. 3.

Also of note on this issue are multiple cases granting the same relief to protect the identities of challengers to COVID-19 vaccine mandates, who were likewise suing in a heightened climate of fear and loathing in a uniquely polarized context. *A. v. Hochul*, No. 1:21-CV-1009, 2021 WL 4734404, at *11 (N.D.N.Y. Oct. 12, 2021) (granting motion to proceed pseudonymously without opposition by defendants), *vacated and remanded on other grounds*,

sub nom. We the Patriots USA, Inc. v. Hochul, No. 21-2179, 2021 WL 5103443 (2d Cir. Oct. 29, 2021); *Jane Does 1 through 11, et al. v. Board of Regents of the University of Colorado, et al.*, Case 1:21-CV-02637-RM-KMT (D. Colo. January 5, 2022)((ECF No. 62) (Order Granting Leave to Proceed Pseudonymously); *Air Force Officer v. Austin*, No. 5:22-CV-00009-TES (M.D. Ga. Feb. 15, 2022) (ECF No. 52) (Order Granting Leave to Proceed Anonymously). Plaintiffs in other similar cases have also proceeded anonymously. *See U.S. Navy Seals 1-26 v. Austin*, 2022 WL 1025144 (N.D. Tex. March 28, 2022); *Navy Seal 1 v. Austin*, 2022 WL 534459 (M.D. Fla. Feb. 18, 2022).

Similarly, in *Allentown Women's Ctr., Inc. v. Sulpizio*, 403 F. Supp. 3d 461 (E.D. Pa. 2019), the Court granted a motion to allow Plaintiff's five witnesses, employed by the Plaintiff abortion clinic, to file declarations and testify under pseudonyms based on nothing more than allegations of fear of violence by pro-life advocates, even though, as defense counsel noted without contradiction, "four are public figures respecting their association with AWC and their pro-abortion advocacy and have an Internet presence under their real names, and none of them show any fear of Sulpizio whatsoever, but rather variously mock, taunt, insult or confront him during his advocacy." *See* docket entries in Case 5:19-cv-01571-CFK, ECF No. 46 at p. 26 and ECF 72 (granting motion to proceed with pseudonyms). The Court ultimately denied Plaintiff's request for an injunction against Sulpizio under FACE. *Sulpizio*, 403 F. Supp. 3d at 472.

Not to the contrary is this Court's recent decision in *Doe v. Juan Gonzales Agency Corp.*, No. 21-CV-00610 (PMH), 2022 WL 3100669 (S.D.N.Y. Aug. 4, 2022). In that case, this Court found no credible fear of retaliation by an employer that already knew Plaintiff's name and by whom she was no longer employed. *Id.* at *3. Further, this Court noted that, unlike here, the Plaintiff in *Doe* was not challenging "the actions of the government" but only private parties. *Id.*

at *3-4. Nor can there be prejudice to any Defendant herein from having to “defend itself publicly before a jury while plaintiff could make her accusations from behind a cloak of anonymity,” *id.* at *4, which factor this Court found decisive, because Plaintiffs here have not requested a jury and seek only equitable relief and a non-jury-triable award of nominal damages. Finally, unlike *Doe*, where the claims presented were “almost entirely factual,” *id.* at *6, the claims here are precisely “legally abstract” issues of First Amendment law. *Id.*

In sum, Plaintiffs have amply demonstrated the overriding need for leave to proceed with pseudonyms in the climate of violence and threats of violence now surrounding pro-life individuals and organizations under the banner of “*If abortions aren’t safe, you’re not either.*”

CONCLUSION

This Court should grant Plaintiffs’ motion to proceed pseudonymously.

Dated: September 30, 2022

Respectfully submitted,

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